REMARKS

Applicants respectfully request entry of the remarks submitted herein. Claims 1-13 and 16-20 are currently pending. Reconsideration of the pending application is respectfully requested.

The 35 U.S.C. §103 Rejections

Claims 1-13, 16, 17, 19 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fazzina et al. (US Patent No. 3,852,501) in view of Suderman (US Patent No. 4,588,600), and further in view of Evans et al. (US Patent No. 4,208,442); and claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Fazzina et al. in view of Suderman and Evans et al., and in light of Kettlitz (US Patent No. 6,235,894). According to the Examiner, it would have been obvious to combine particular ingredients from the cited references and vary the amounts to arrive at the presently claimed invention. This rejection is respectfully traversed.

The current invention relate to a dry mix that can be used as a multipurpose filling. The dry mix is multipurpose because it can be used in combination with sweet- or savory-tasting products, and it also can be used as a filling in baked, fried, or uncooked products. The dry mix claimed herein also can be included in a spread. Previous to the present invention, a filling was suitable for either baked products or uncooked products, but not for both. Also previous to the present invention, a filling that could be combined with sweet tasting products was not suitable for use in savory tasting products, and *vice versa*. The currently claimed dry mix overcomes all of these limitations and can be used in baked, fried and uncooked products as well as sweet and savory products. Consequently, the claimed dry mix truly has multipurpose applications, unlike any of the products available prior to the claimed invention.

In order to have such multipurpose capabilities, a dry mix needs to meet certain criteria with respect to its freeze thaw stability, its baking stability and its viscosity under alkaline, acid or neutral pH conditions. Each of these criteria is recited in pending claim 1. That is, the claimed dry mix has a particular freeze-thaw stability, baking stability, and viscosity. On the other hand, these features are not essential and are not even considered when making a dry mix

for use as a coating. Specifically, Fazzina et al. discloses a dry mix food coating for imparting fat-fried texture, appearance and taste to baked foodstuffs (see column 1, line 7). The following table provides a comparison between the claimed multipurpose dry mix (e.g., based on claim 7) and the dry mix disclosed by Fazzina et al.

Ingredients	Pending claim 7	Fazzina
Gluten	10-20%	--
Starch hydrolysate	20-45%	15-35%
Flour	5-15%	8-35%
Starch n-octenyl succinate	1-10%	--
Modified starch – partially gelatinised	--	5-18%
Fat	15-28%	10-50%

The Examiner asserted that Fazzina et al. discloses the claimed multipurpose dry mix because, according to the Examiner, Fazzina et al. discloses some of the same ingredients in amounts that fall within or that overlap with the claimed ranges (OA at page 3). The Examiner acknowledged, however, that Fazzina et al. does not specifically mention gluten but, according to the Examiner, flour contains gluten and the dry mix of Fazzina et al. contains flour (OA at page 4). This statement is unsupported by any evidence, and one of skill would realize that, even if the Examiner's assertion is correct that flour contains gluten, the claimed dry mix requires both flour, at 5-15%, AND gluten, at 10-20%. Therefore, the claimed composition is not suggested by Fazzina et al.

The Examiner also acknowledged that the coating described by Fazzina et al. does not contain starch n-octenyl succinate (OA at page 5). On the other hand, the pending claims require 1-10% starch n-octenyl succinate, which is very different from the 5-18% modified, partially-gelatinized starch disclosed in Fazzina et al. Also, Fazzina et al. allows up to 35% flour, which is significantly different from the 15% upper limit in the claimed invention. Further, Fazzina et al. allows up to 50% fat, while the claimed invention only allows up to 28% fat. The claimed composition is very different from the composition of Fazzina et al.

The Examiner asserted that, since the dry mix of Fazzina et al. can be applied to a variety of foodstuffs, it is deemed a multipurpose mix (OA at page 3). However, this is not the meaning of "multipurpose" as used in the current invention. In the current invention, "multipurpose" refers to a dry mix that can be used in different cooking conditions and/or in combination with

different tastes (e.g., savory or sweet). The characteristics and requirements of the claimed multipurpose dry mix are completely different from those of the coating of Fazzina et al.

The Examiner has filled the gaps in Fazzina et al. with Suderman, Evans et al., and Kettlitz. Sudeman discloses the use of vital wheat gluten; Evans et al. discloses the use of starch n-octenyl succinate; and Kettlitz discloses the use of stabilized starches. In *KSR Int'l Co. v. Teleflex Inc.* (127 S. Ct. 1727, 1741 (2007)), the Supreme Court stated that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." In addition, the Federal Circuit also stated, in *Ruiz v. A.B. Chance Co.* (357 F.3d 1270, 1275, C.A. Fed. 2004), that, when

> [M]aking the assessment of differences [between the prior art and the claimed subject matter], section 103 specifically requires consideration of the claimed invention 'as a whole'... The 'as a whole' instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result – often the very definition of invention.

In the present case, the Examiner simply combined references to allegedly arrive at the claimed composition, which is contrary to the Courts' instructions in both *KSR* and *Ruiz*.

Applicants respectfully submit that this is a classic case of hindsight, which is still improper. The *KSR* Court, quoting *Graham* (383 U.S., at 36), stated that the "Supreme Court has 'warn[ed] against 'temptation to read into the prior art the teachings of the invention in issue' and instruct[ed] courts to 'guard against slipping into the use of hindsight'." (*KSR International Co. v. Teleflex Inc.*, 127 S. Ct., at 1742 (2007)). In addition, the KSR Court stated that a "factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." (*KSR* at 1742). Instead of considering the claimed composition as a whole, the Examiner has improperly broken down the composition into its individual parts. Further, the assertion that the claimed amounts of each ingredient would be obvious to one of skill in the art based on some general benefits described in the cited references is conclusory and unsubstantiated. In the absence of an articulated reasoning as to why one of

skill would arrive at the particularly claimed multipurpose dry mix, the current obviousness rejection appears to be based on improper hindsight analysis.

In view of the remarks herein, Applicants respectfully request that the rejection of claims 1-20 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

Applicants respectfully request allowance of claims 1-13 and 16-20. If a telephone call to the undersigned would expedite prosecution, the Examiner is encouraged to do so. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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Date:_____

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